IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 5-2-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.19121 of 2006 and M.P.No.1 of 2006

K. Velmurugan ... Petitioner

Vs.

The Director of Drugs Control,
Tamil Nadu,
Chennai - 600 006. ... Respondent

Prayer: Writ petition filed under Article 226 of Constitution of India, praying this Court to issue a writ of certiorarified mandamus calling for the records pertaining to the order of the respondent in Proc.R.Dis.No.17623/E1/ 2004 dated 17.1.2006 and quash the same and direct the respondent to include the name of the petitioner in the panel of the year 2005-2006 for promotion to the post of Senior Drug Inspector.

For Petitioner : Mr.M.Hidayatullakhan
For Respondent : Mr.V.Viswanathan,
Addl.Government Pleader

O R D E R

By consent of the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the respondent, the writ petition is taken up for final disposal.

2. Petitioner seeks to quash the order of the respondent dated 17.1.2006 and to direct the respondent to include the name of the petitioner in the panel of the year 2005-2006 for promotion to the post of Senior Drug Inspector.

3. Petitioner was appointed as Drug Inspector on 22.10.1985 through the Tamil Nadu Public Service Commission and the next avenue of promotion is to the post of Senior Drug Inspector. The panel for promotion to the post of Senior Drug Inspector was prepared for the year 2005-2006 and the name of the petitioner was not included for the reason that he was undergoing punishment.

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4. Petitioner states that while he was working as Drug Inspector in Chengalpat range, he was transferred and posted at Kancheepuram on 13.9.2001 under the control of the Assistant Director of Drugs Control, Zone-IV, Chennai-45, and a charge memo under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was issued to him on 29.10.2004. The charge is that the petitioner evaded duty and knowingly allowed the case time barred in respect of sanction of prosecution of M/s.Alfred Berk & Co., Alanthur. According to the petitioner, he submitted a representation on 3.12.2004 seeking further time to submit his explanation as he was not permitted to peruse the file. Thereafter, the in-charge Director of Drugs Control, whose substantive post was the Managing Director of the Tamil Nadu Medical Services Corporation, passed the final orders on 17.1.2006 and imposed the punishment of stoppage of increment for two years without cumulative effect. The punishment was given effect from the next increment date that is, January. The said order of punishment is challenged among other grounds that the competent authority to impose the punishment against the petitioner is only the Director of Drugs Control and the in-charge Officer has no jurisdiction to pass the order.

5. Apart from the contention raised with regard to the merits of the case, the learned counsel appearing for the petitioner, at the time of argument restricted his submission with regard to the jurisdiction of the in-charge Officer in passing the impugned order.

6. Taking note of the said contention of the learned counsel for the petitioner, on 16.10.2006 this Court directed this writ petition to be posted for orders, as it was reported that the matter in issue is covered by the Division Bench decision of this Court reported in 1997 WLR 33 (C.Baskaran v. The District Collector, Trichy).

7. When this matter was posted on 25.1.2007, the learned Additional Government Pleader appearing for the respondent fairly conceded that only in-charge officer has passed the impugned order and in view of the judgment referred above, the matter is covered against the respondent. The learned counsel further submitted that liberty may be given to the appropriate authority to pass fresh orders.

8. I have considered the submissions of the learned counsel for the petitioner as well as the learned Additional Government Pleader.

9. Admittedly, the impugned order is passed by the in-charge Officer of the Director of Drugs Control. Whether the in-charge Officer can discharge the statutory functions of the original Officer, is considered by the Division Bench of this Court in the decision reported in 1997 WLR 33 (cited supra). In para 4 of the Judgment, the Division Bench held as follows,

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"4. There is one more aspect of the matter which has not been noticed by the petitioner/appellant and also by the learned single Judge. The order is not passed by the District Collector, Trichy, but it is passed by the officer-in-charge of the office of the District Collector. The very title of the proceedings shows that it is the order passed by the Incharge Collector. In-charge collector cannot be considered to be the Collector and he is entitled to discharge the statutory functions of the Collector. He is only intended to look after the day-to-day administration and is not entitled to exercise the statutory powers. Therefore, on this ground also, the impugned order is liable to be set aside."

10. In an unreported decision of this Court made in W.P.(MD)No.2307 of 2004 (M.Ramasamy v. The Deputy Inspector General of Police, Madurai, and another) by order dated 25.1.2005, K.Raviraja Pandian, J., considered the issue as to whether an in-charge Officer can place a person under suspension, pending enquiry. Following the Division Bench judgment, referred above, and also the Honourable Supreme Court decision reported in (2000) 1 SCC 555 (State of Madhya Pradesh v. Bhupendra Singh), the learned Judge quashed the order of suspension and in para 14 held thus,

"14. The above said decisions are clear to the effect that the authorities on whom the statute vests the power is only competent to exercise that power and by executive or administrative orders, the police note No.SC/30/2004 dated 21.6.2004 in this case, the power cannot be vested with the person other than the one stated in the statute. The present case is also covered by the issue. Though the learned Government Pleader put in an argument that the in-charge Collector is having every power and the police note says so, the contention is against the proposition as laid above."

11. In view of the above referred decisions and as the impugned order passed by the in-charge Officer is held to be unsustainable, the same is set aside with liberty to the competent authority to pass fresh orders, if it is warranted.

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12. The writ petition is allowed to the above extent. No costs. Connected miscellaneous petition is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

vr/

To

The Director of Drugs Control,
Tamil Nadu, Chennai - 600 006.

1 cc To Mr.M.Hidayathulla Khan, Advocate, SR.6766.

W.P.No.19121 of 2006

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RVL 06.02.2007

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